

REMARKS

The Office Action mailed June 10, 2009 has been reviewed and reconsideration of the above-identified application in view of the following amendments and remarks, is respectfully requested

Claims 1-18 are pending and stand rejected.

Claims 1, 4, 7, 10, 13 and 16 are independent claims.

Claims 1, 4, 5, 7, 8, 10, 13 and 16 have been amended.

Claims 1-18 stand rejected under 35 USC 103(a) as being unpatentable over Salmonsens (USP no. 7, 209, 874) in view of Silen (USPPA 20020116518).

In maintaining the rejection of the claims, the Office Action provides the following further rationale for supporting the rejection of the claims:

1. the Office Action interprets the pre-stored content as bandwidth requirements that dictate the quality of the content that is desired for playback. Thus, in the claimed invention the downloaded content is not independent of the operating variables. Silen disclosed operating variables such as bandwidth requirements, said bandwidth requirements being relevant to the downloaded content;
2. the Office Action interprets the pre-stored content as download quality indicators and is not multimedia content. Thus, when Saimonsen-Silen disclosed using available bandwidth indicators to control the download quality then Salmonsens-Silen disclosed playing the downloaded content combined with the pre-stored content;
3. while it is true that Silen dynamically adjusts for changes in bandwidth [at the server] Silen is not limited to this embodiment. Silen paragraph 12 [sic] discloses wherein the bandwidth detection is performed before the presentation is selected by the user for downloading/streaming; and
4. Silen discloses considering that the bandwidth of the channel may be varying such that there may be more or less available bandwidth than either of these formats requires.

Applicant thanks the Examiner for providing further reasoning for rejecting the claims. However, applicant continues to respectfully disagree with and explicitly traverse the rejection of the claims. As the claims have been rejected citing the same references as in the prior Office Action, applicant reasserts, as if in full, herein, the arguments presented in response to the rejection of the claims in the prior Office Action. Applicant, thus, will address the interpretation of the claimed subject matter made by in the Office Action in reply to the applicant prior arguments.

With regard to item 1, that the pre-stored content represents bandwidth requirements and Silen discloses operating variables such as bandwidth requirements, said bandwidth requirements being relevant to the downloaded content, applicant submits that while bandwidth requirements may have an effect on the downloaded content the bandwidth requirements themselves are not relevant to the downloaded content. That is, while the pre-stored content may provide information regarding the content to be downloaded and a quality of the download, the bandwidth requirements to achieve the quality of the download is independent of the actual content to be downloaded. Thus, the bandwidth requirements are not relevant to the download content, as is recited in the claims.

However, as there may be some ambiguity regarding the term “relevant to” used in the claims, applicant has elected to amend the claims to recite the subject matter claimed in better form, as will be explained.

With regard to item 2, the Examiner interprets the pre-stored content as download quality indicators and that Salmonsens-Silen discloses playing the downloaded content combined with the pre-stored content. However, applicant submits that if the pre-stored content are solely download quality indicators, the downloaded content would be played in view of the quality indicators and not combined with the quality indicators. That is, the downloaded content would be downloaded to satisfy the quality indicators, but the quality indicators would not be part to the downloaded content.

With regard to item 3, the Examiner interprets paragraph 12 of Silen as disclosing that the bandwidth detection is determined by the terminal and then provided to the server. However, Silen expressly discloses that the server performs the operation of

determining bandwidth and that the downloading is based on the server determined bandwidth. In reading paragraph 12 in view of the teachings of Silen as expressed in Figure 1, for example, one would understand that after a request was made, then the server determines the bandwidth prior to the presentation or downloading the content.

Even considering the teaching of para. 11 of Silen, wherein the terminal has bandwidth determination means, Silen fails to teach that the determined bandwidth is based on the terminal performing the bandwidth determination during the downloading. Rather, para. 11 would be read that the terminal may determine a bandwidth and provide the determined bandwidth to the server. However, the server then determines and adjusts the bandwidth to achieve desired criteria, thereafter (see para. 12).

With regard to item 4, the Office Action interprets Silen for teaching that the bandwidth of the channel may be varied such that more or less available bandwidth may be used for either of the formats (i.e., NTSC 29.97 interlaced frames/sec and PAL 25 interlaced frames/sec). However, applicant submits that the transmission bandwidth of these formats is known and fixed and that even if the bandwidth was varying, the server requires transmission at the fixed rate.

Although applicant believes that each of the Examiner's remarks has been adequately addressed, applicant has elected to amend the claims to recite the subject matter claimed in better form. No new matter has been added to the claims to present the subject matter claimed in better form. More specifically, the claims have been amended to recite that the pre-stored information includes information regarding content of the downloaded content (see page 7, lines 2-9) and a further monitoring step that monitors the available bandwidth to adjust a quality of the combined downloaded content and the pre-stored content. (page 7, lines 20-27).

In consideration of the interpretations of the claim language provided by the Examiner, the claims have been amended to recite that the pre-stored content includes information regarding the content of the downloaded content and is, thus, patently distinguishable over the cited references and the interpretation of same recited in the Office Action.

In this case, the combination of the cited references fails to disclose at least one material element recited in the independent claims and thus, the combination of the cited references cannot be said to render obvious the subject matter recited in the independent claims.

With regard to the remaining claims, these claims depend from a corresponding one of the independent claims and, hence, are also allowable by virtue of their dependency upon an allowable base claim.

For the remarks made herein, applicant submits that the reasons for the objections and rejections of the claims have been overcome and withdrawal of same is respectfully requested. The prompt issuance of a Notice of Allowance is expressly requested.

In the event, the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,
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